

RACE FOR EQUALITY

Challenging racism in the *NHS*

Disciplinary action and race – a briefing for reps

In UNISON equality comes from the heart. For us challenging discrimination and winning equality are fundamental to everything we do. As the UK's biggest health union we understand that from its birth the NHS has called on staff from across the world to come and work in it. And to this day the NHS relies heavily on Black staff whether they are British, or have moved here to work. The NHS is there to serve everyone in every community with respect, dignity and fairness. And those are values that should apply to everyone employed in it too.

In 2019, the Chief People Officer for the NHS in England has noted that:

“Black and minority ethnic (BME) staff constitute almost a fifth of the total NHS workforce, yet the experiences they often face do not correspond with the values upon which the NHS proudly stands. It cannot be right that some of our hardworking staff are still more likely than their colleagues to face unfair treatment and discrimination in the workplace.”¹

Once a disciplinary investigation starts, it is distressing for the member of staff concerned (even if they are cleared of the allegation), time consuming for managers and demoralising for colleagues.

Read the details of a disciplinary case that went to an employment tribunal at: www.voice-online.co.uk/article/it-expert-wins-dismissal-case-following-racist-attack. This case demonstrates how employers can jump straight to disciplinary action for Black staff and the human cost experienced.

Talking to your members and potential members about their experiences of racism in the workplace can be a great way to recruit, organise and develop your branch.

What the data tells us

The latest Workforce Race and Equality Standard (WRES) report notes that Black² staff are 1.16 times more likely to enter the formal disciplinary process compared to white staff in the same organisation.

This number has reduced from 1.56 in 2016 but is still too high. (This data comes from the Workforce Race Equality Standard (WRES) report. Although data is not collected and published in the same way in other UK countries, there is no reason to believe that the data would be significantly different.)

There are geographical differences in referrals. London is the area with the highest number of Black staff entering the formal disciplinary process. There are also variations by the type of NHS trust too, with community providers faring worst and the racial disparity within the ambulance sector increasing rather than decreasing. So it is important to find out the full picture for your employer.

Actions for branches

Finding out

- If you work in a trust in England check out the WRES data. Use these links to see the [2016 data](#)³, [2017 data](#)⁴, [2018 data](#)⁵, [2019 data](#)⁶ and [2020 data](#)⁷. Find your employer and look at whether the rate has decreased, increased or remained the same.
- The WRES data covers involvement in processes but you can also ask your employer for data on outcomes from disciplinary cases by race ie percentage of Black/white staff receiving sanctions and percentage of Black/white staff where the case did not progress.
- If you work for other types of employer, or in Scotland, Cymru/Wales or Northern Ireland, ask your employer to provide data on disciplinary action taken against staff broken down by racial/ethnic group. Ask for information for the last three years so that you can see if there are any trends.
- Talk to members about their experiences to help you get a clear understanding of what is happening locally – are Black workers being disproportionately subjected to disciplinary, performance management or capability action? Why do they think this is happening?
- Monitor your own branch casework, check how many disciplinary cases involving Black workers your branch is dealing with and look for patterns for particular groups or in particular teams/settings – for example particular shifts, or a concentration of issues among Bank or agency staff.

3 <https://www.england.nhs.uk/wp-content/uploads/2017/03/wres-2016-Unify-data.xlsx>

4 <https://www.england.nhs.uk/wp-content/uploads/2017/12/workforce-race-equality-standard-2017-Unify-data.xlsx>

5 <https://www.england.nhs.uk/wp-content/uploads/2018/12/workforce-race-equality-standard-2018-SDCS-data.xlsx>

6 <https://www.england.nhs.uk/wp-content/uploads/2020/01/wres-2019-sdcs-data.xlsx>

7 <https://www.england.nhs.uk/wp-content/uploads/2021/02/WRES-2020-raw-data.xlsx>

1 <https://www.england.nhs.uk/wp-content/uploads/2019/07/closing-the-ethnicity-gap.pdf>

2 WRES data use Black and Minority Ethnic (BME). UNISON uses the broad political and inclusive term Black

- Ensure you are familiar with UNISON's [Race Discrimination Claims Protocol](#) which is there to ensure that branches and regions work together to guarantee that possible race discrimination claims are robustly assessed and members receive the right kind of support

Give members a voice

- Set up focus groups for Black workers so they can discuss their experiences in more depth to bring out the stories behind the data. For example, are they given enough supervision and guidance? Are there differences in management style compared with white staff? Do informal discussions take place to try to resolve issues or does the employer go straight down the disciplinary route? In England, discuss the employer's WRES action plan and get views about where there are gaps that need to be addressed.
- Ask that Black workers be given the opportunity to meet with senior managers and leaders, for example, in drop-in sessions with board members. Your role will be critical to ensure your employer provides the reassurances needed for staff to feel safe to take part and speak openly

Negotiate with your employer

Policies

- Check that an induction process and supervision and support mechanisms are in place for new staff – especially staff trained overseas – and that they are adequate.
- Interrogate the disciplinary policy and ensure there is clarity about the disciplinary process, including who makes the decision, what kind of training they should have, etc. Use UNISON's model disciplinary policy as a guide (this is currently being updated, we will let you know when it is available).
- Work with the employer to ensure diversity among investigating officers and in the composition of disciplinary panels – this is likely to need targeted training to ensure enough Black staff are available to take up these roles.
- Ensure that line managers have a good understanding of fitness to practice processes and procedures and that there are checks and balances to prevent inappropriate referrals which could disproportionately affect Black staff.
- Check what kind of support is in place for staff going through the disciplinary process. If there isn't any then negotiate for it.

Training

- Ask the employer to review the training and support line managers receive on ensuring race equality and avoiding bias in how they performance manage. Anecdotal evidence suggests that line managers can take refuge in formal processes when dealing with Black staff as a defensive mechanism whereas they are comfortable to deal with things informally when it comes to white staff.

Just culture – reducing rates of disciplinarys

- Ask the employer to work towards operating a 'just and learning culture' (you can read more about this [here](#) and there is a case study [here](#)) so that the emphasis is on learning from errors rather than blame.
- Ensure that before disciplinary action is taken, there is some form of accountability that makes local managers demonstrate that going down the disciplinary route is appropriate.
- Encourage your employer to set board-led targets in this area. A recent NHS England and Improvement publication⁸ notes that there are two goals for organisations: first to reduce the likelihood for Black staff entering the formal disciplinary process and secondly to reduce the likelihood of all staff entering the formal disciplinary process. With this in mind the document details four models of good practice in terms of reducing the gap between Black and white staff entering the formal disciplinary process. Does your employer follow any of these models? If not, negotiate with them to introduce one:
 - Decision tree checklist: structured questions to help managers decide if formal action is necessary
 - Post action audit: all decisions to take staff through a formal disciplinary are reviewed to look at any weaknesses, biases or drivers or adverse treatment of any staff group
 - Pre-formal action check by a director level member of staff and/or panel: all cases are reviewed by an executive board member or a panel including a board member prior to decision on whether to proceed to formal action
 - Pre-formal action check by a trained lay member: as above but by a trained lay member

8 <https://www.england.nhs.uk/wp-content/uploads/2019/07/closing-the-ethnicity-gap.pdf>

Compounding discrimination

- If Black staff are more likely to go through a disciplinary process then there could be knock-on effects that compound disadvantage – it could affect career prospects, damage confidence and lead to stress-related sickness absence which in turn affects performance. If there are race disparities in disciplinarys – work with the employer to think through how this could affect other areas and consider how to mitigate these knock-on effects.
- For example, in England the new pay progression system, affecting pay from 2021, means a disciplinary sanction live at the time of a pay step review could delay someone's pay step. Ask the employer to agree an action plan to ensure that any disparities in the rate of disciplinary sanctions against Black staff are addressed ahead of 2021. If disparities remain then implementation of the disciplinary sanction element of the new system should be delayed to guard against discriminatory pay outcomes.

Finally, let us know

The UNISON health group is keen to hear from branches about their experiences. Have you been able to implement any of the suggested actions? Has the disciplinary rate for Black staff reduced/increased? What are Black staff telling you about their experiences? Please email us at health@unison.co.uk